Office-Supreme Court,
FILED
JUL 16 1969
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. [redacted] 182

THE SECURITY SEWAGE EQUIPMENT COMPANY,
Petitioner,

vs.

EDWIN F. WOODLE,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

EDWIN F. WOODLE,
628 Keith Building,
Cleveland, Ohio,
Respondent,
In Propria Persona.

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THE SECURITY SEWAGE EQUIPMENT COMPANY,
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vs.

EDWIN F. WOODLE,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

OBJECTIONS TO JURISDICTION.

The State Court has not decided a federal question of substance, nor has the State Court decided any question in a way which is not in accord with applicable decisions of this Court. No real or substantial constitutional question is involved herein.

QUESTION PRESENTED.

Petitioner claims that it was denied due process of law and the equal protection of the law in violation of the Fourteenth Amendment of the United States Constitution, because it was denied the right to represent itself in this action under the facts and circumstances disclosed by the record and pleadings.

STATEMENT OF THE CASE.

Petitioner is an Ohio corporation. Petitioner, by counsel other than the respondent, instituted an action in the Common Pleas Court of Cuyahoga County at Cleveland against the Deputy Health Commissioner of the County. The action sought a recovery of both compensatory and punitive damages. The action was grounded upon damages allegedly sustained by the petitioner as a result of a conflict of interest caused by an engagement by the Deputy Health Commissioner in a competing business. After that action had been pending for more than a year, the respondent was retained by the petitioner as associate trial counsel.

So far as could be determined, the action itself was without precedent. No reported case could be found anywhere in which a recovery of damages was sought based upon an alleged conflict of interest.

Respondent continued as associate counsel until the conclusion of the trial. The trial itself required five weeks, twenty-four trial days. At its conclusion, the jury impanelled returned a verdict for the defendant, adverse to the petitioner.

The petitioner refused to pay anything for services rendered by the respondent on the trial of that action. Thereupon the respondent instituted this action in quantum meruit for the reasonable value of the services rendered in the amount of Seven Thousand Three Hundred Fifty Dollars and Fifty Cents ($7,350.50). This action was filed in the Garfield Heights Municipal Court.

The petitioner employed counsel to represent it in this action. Counsel so employed prepared an answer to the respondent's petition. That answer was verified and was filed in the action. The petitioner in its Statement of the Case refers to that answer as a general denial. In

fact, it was not a general denial, since the rules of the municipal courts in the State of Ohio do not permit general denials. The answer of the petitioner in that case contains specific denials of various allegations of the respondent's petition therein.

Subsequently, at a pre-trial hearing of the case, petitioner stated its desire to file a cross-petition against respondent and was extended a leave of two weeks within which to do so. Counsel representing the petitioner declined to prepare or file a cross-petition for reasons which will be referred to hereafter. Upon the insistence of the petitioner that such a cross-petition be filed, counsel for petitioner withdrew.

However, the petitioner's answer was not withdrawn by counsel and the case remained at issue before the Garfield Heights Municipal Court upon the petition of the respondent herein and the answer of the petitioner herein. It remained at issue until the petitioner-corporation prepared and filed in place of its original answer a pleading denominated "Answer Pleading Counter-Claim." Under the law of Ohio, the original answer filed by petitioner's counsel was considered as having been superseded and was no longer of any force and effect.

It is the action of the Ohio courts in dealing with the petitioner's Answer Pleading Counter-Claim that constitutes the basis for all of the complaints on behalf of the petitioner herein which followed, including the present attempt to secure the allowance by this Court of the petition for a writ of certiorari.

The petitioner's pleading was stricken from the file of the case for the reason that it was not prepared, and was not filed, by an attorney and for the reason that a corporation such as the petitioner, under the facts of the instant case, had no right to appear and to seek to present

a counter-claim except by and with the service of counsel.

The petitioner in its Statement of the Case asserts "that it had vainly sought to secure counsel; that it had asked no less than ten attorneys in the Cleveland area to prosecute its counter-claim 'but that in each and every case due to the nature of this litigation, the attorney whose services have been solicited has refused to provide representation.' "

The quoted statement of the petitioner appeared in an affidavit executed by the General Manager of the petitioner attached to petitioner's motion filed in the Court of Common Pleas of Cuyahoga County for reconsideration of an order striking petitioner's counter-claim. Nowhere in that affidavit, or elsewhere, has the petitioner asserted that it was unable to secure counsel to prepare a proper counter-claim, or to prepare the counter-claim which was in fact filed by it.

At no time did the petitioner file an affidavit asserting that it had consulted counsel other than its original counsel of record for the purpose of preparing and filing a counter-claim. The petitioner's affidavit which is referred to on page 4 of its petition herein, refers only to its attempt to secure counsel "to prosecute its counter-claim," which the petitioner had undertaken to prepare and to file without benefit of counsel.

LAW AND ARGUMENT.

Petitioner's Representation by Counsel.

In considering petitioner's attempt to secure the allowance of its Petition for a Writ of Certiorari, perhaps the first consideration which will naturally come to the attention of the Court is the circumstance that in presenting its Petition before this Court the petitioner is in fact presently represented by counsel. In fact the petitioner is presently represented by two counsel, as appears from the Petition filed by it in this Court.

It is of more than passing moment, therefore, to consider why a corporation who is presently represented before this Court by two members of the bar seeks the attention of this Court to argue the merits of its claim that it had an absolute right to appear in a trial court of the State of Ohio without benefit of counsel.

The petitioner, who is now represented by counsel before this Court, complains that it was not accorded the equal protection of the law because it was refused the right to present and to try its own counter-claim without benefit of counsel, notwithstanding the fact that neither in Ohio nor elsewhere may corporations appear and represent themselves in a court of law.

On page 4 of the Petition in the case at bar, it is pointed out that the petitioner advised the Court of Common Pleas of Cuyahoga County that it had "now retained Jerry Gordon as its attorney in the above matter, but that Gordon had expressly limited his services in the litigation to those issues not directly related to the merits of the counter-claim." Jerry Gordon is one of the attorneys appearing as counsel for the petitioner before this Court.

"Those issues," referred to in the above affidavit submitted by the petitioner to the Court of Common Pleas, involved only the claimed right of the petitioner to appear

and to represent itself, without benefit of counsel, in the filing and prosecution of its counter-claim in the State Courts of Ohio. It is a conclusion which, although not clearly stated, cannot be avoided, that present counsel for the petitioner are also limiting their services to "those issues" and are equally declining to represent the petitioner on the issues "directly related to the merits of the counter-claim."

It is generally estimated that there are approximately forty-five hundred practicing attorneys maintaining their offices in Cuyahoga County, Ohio. In addition, some twenty-five hundred additional attorneys, having offices in surrounding adjacent counties, generally and frequently practice in Cuyahoga County. When the petitioner initiated the proceeding which is now before this Court, the petitioner, by affidavit, asserted that "no less than ten attorneys in the Cleveland area" had been consulted by it and had declined to assist the petitioner "to prosecute his counterclaim." "The Cleveland area" includes the counties above referred to wherein some seven thousand attorneys practice and maintain their offices.

This Court may well doubt the claim of the petitioner to have undertaken a thorough and conscientious effort to find counsel to represent it. In particular, we suggest that the nature of that effort is hardly such as to merit the attention and consideration of this Court, even if to the "no less than ten attorneys" referred to in petitioner's affidavit there were added the two counsel who presently represent petitioner.

The sole basis for the proceeding before this Court can be nothing other than the affidavit of the petitioner before the Court of Common Pleas of Cuyahoga County referred to on pages 3 and 4 of its Petition. In that affidavit, petitioner concedes that "in each and every case, due to the

nature of this litigation, the attorney whose services have been solicited has refused to provide representation."

The chief significant words in the above quoted statement of the petitioner are the words "due to the nature of this litigation." However, the significance is not at all that which the petitioner seeks to assign. The significance of those words: "the nature of this litigation," lies in the fact that the litigation which the petitioner seeks to institute and prosecute is in fact frivolous and entirely without merit. Of course, as pointed out on page 6 of the Petition, this fact was also directed to the attention of the Supreme Court of Ohio in oral argument.

Certain Canons of Ethics of the American Bar Association seemingly have had an important part in producing the petitioner's alleged difficulty. Canon 30, as pertinent hereto, states:

> "A lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. * * * His appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination."

The entire proceedings of the trial in which the respondent participated as associate trial counsel have been transcribed and were available for study by every lawyer whom petitioner might have consulted, or could. It is suggested that an examination of the pleading which the petitioner prepared and sought to prosecute, as well as a study of the transcribed record of the five weeks trial, must inevitably have resulted in an application of the above principles of Canon 30. Further, Canon 31, as pertinent hereto states:

> "No lawyer is obliged to act either as advisor or advocate for every person who may wish to become his

client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what employment he will accept as counsel, what causes he will bring into court for plaintiffs, what cases he will contest in court for defendants. The responsibility for advising as to questionable transactions, for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility."

The respondent cannot help but believe that all counsel consulted by the petitioner, including those presently representing the petitioner, have declined to assist in prosecuting the petitioner's purported counter-claim in the light of the provisions of Canon 31.

Right of a Corporation to Represent Itself in Court Without Benefit of Counsel.

The petitioner is a corporation. It complains in this case that it has been prevented from undertaking before a court of law what a natural person might be allowed to do. Although for certain purposes, in the eyes of the law, a corporation is recognized as a "person," such recognition is neither absolute nor all-inclusive, nor can it be claimed to exist for all purposes.

The use of the corporate device for the protection of those individuals desiring to limit their financial responsibilities is necessarily accompanied by certain limitations and restrictions. One such restriction, and an obviously reasonable one, is that a corporation may not appear as the respondent has in the instant case "propria persona" and act as counsel on its own behalf before a court of law.

It is asserted, page 10 of the Petition, that a corporation is "within the ambit" of the Equal Protection Clause of the Fourteenth Amendment. Undoubtedly this is true. Cited in support of that statement is the case of *Santa Clara County vs. Southern Pacific Railroad*, 118 U.S. 394.

So far as the question presented in the case at bar is concerned, that citation provides the petitioner with no support since the defendant corporation in the cited case was well represented by counsel at all stages.

Also cited by the petitioner as supporting its contention, page 10 of the Petition, is the case of *Barbier vs. Connolly*, 113 U.S. 27. However, that case also furnishes no support for the petitioner in the question it seeks to present. No corporation was a party to the *Barbier* case. For the same reason, the reference in the quotation from the opinion of this Court in that case, on page 10 of the Petition, containing the words "all persons," offer no support whatever for the petitioner's contention that in that case this Court believed, or purported, that it was including the right of a corporation to appear and to represent itself before a court of law.

On the other hand, essentially all courts that have considered this question have decided adversely to petitioner's contention. We submit the following:

J. T. Whalen, Inc. vs. Pritzert, 3 N.Y. Supp. (2d) 418:

> Syl. 1. "A corporation may not appear in person and act for itself."
>
> Syl. 3. "Legal proceedings may not be conducted in court by an employee of a corporation who is not an officer of the court."
>
> Opinion. "Legal proceedings are not to be conducted in court by an employee of a corporation who is not an officer of the court, not subject to the discipline of the court, and knowing but one master, the corporation which employs him. The obvious dangers of tolerating such a practice are too great."

Aberdeen Bindery, Inc. vs. Eastern States Printing and Publication Co., 3 N.Y. Supp. (2d) 419:

Syl. 2. "A corporation has no ability or authority to appear in propria persona at common law or in the absence of an authorizing statute."

Syl. 3. "The constitutional provision that corporations may sue and be sued is declaratory of that right and does not authorize an appearance by a corporation in propria persona."

Syl. 5. **"The statute authorizing a party to prosecute or defend a civil action in person or by attorney contemplates a natural person and does not authorize a corporation to appear in propria persona."**

Syl. 14. "A corporation was not authorized to appear or answer in court in person, and in a suit brought against it in the Municipal Court it could act only through a duly licensed attorney."

Paradise vs. Nowlin, 86 Cal. App. (2d) 897, 195 Pac. (2d) 867:

Syl. 3. "A natural person may represent himself and present his own case to the court although he is not a licensed attorney."

Syl. 4. **"A corporation is not a natural person but is an artificial entity created by law and as such it can neither practice law nor appear or act in person."**

Syl. 5. "A corporation cannot appear in court by an officer who is not an attorney and it cannot appear in propria persona."

Detroit Bar Association vs. Union Guardian Trust Co., 282 Mich. 216, 276 N.W. 365:

Syl. 2. "A corporation can appear in a judicial proceeding only by an attorney, regardless of whether the corporation is interested in its own corporate capacity or in a fiduciary capacity."

The same principles have been applied in the Courts of the United States:

Heiskell vs. Mozie, 82 Fed. (2d) 861:

Syl. 5. "Corporation involved in litigation cannot appear in propria persona."

Laskowitz vs. Shellenberger, 107 Fed. Supp. 397:

Syl. 2. "A corporation cannot practice law, and can act only through the agency of natural persons, and therefore it cannot appear in court by an officer of the corporation who is not an attorney, nor appear in propria persona, but must appear through a licensed attorney."

Simbraw, Inc. vs. United States of America, 367 Fed. (2d) 373:

Syl. 2. "Corporation which sought to litigate its rights in court of law would not be permitted to represent itself by its president, but would be required to employ an attorney at law to appear for it and to represent it in the litigation."

In its opinion in the *Simbraw* case, the Court quoted with approval the case of *MacNeil vs. Hearst Corp.*, 160 Fed. Supp. 157:

Opinion. "May a corporate plaintiff institute and prosecute a civil suit in court by its corporate officers alone?

"The answer to the question must be in the negative. The authorities in the federal courts which have determined the question are uniform in holding that a corporation can do no act except through its agents and that such agents representing the corporation in court must be attorneys at law who have been admitted to practice, are officers of the court and subject to its control."

In its opinion in that case, an observation was made which could well apply to the case at bar:

"The confusion that has resulted in this case from pleadings awkwardly drafted and motions inarticulately presented demonstrates the wisdom of such a policy."

CONCLUSION.

The petitioner in this case is not complaining that it was not treated before the courts of Ohio as precisely all other corporations are treated before the courts of that State, or in fact as all other corporations are treated before the courts of practically every state and before the courts of the United States.

Petitioner is complaining only that it was not treated as a natural person before the courts of Ohio instead of having been treated as the strictly artificial person it is. The treatment accorded to the petitioner before the courts of the State of Ohio is the same as has been accorded to corporations before almost all courts everywhere as far back as recorded cases go.

This established principle of law is well stated by the Supreme Court of Illinois in the case of *Nixon, Ellison and Co. vs. Southwestern Insurance Co. of Cairo, Illinois,* 47 Ill. 444:

> Opinion. "We find that as early as Lord Coke's time that it was the recognized doctrine that a corporation aggregate could not appear in person to an action. Coke Litt. 66 b. And we find the same rule announced in Comyn's Digest Pleader 2B2, where it is said, speaking of a corporation aggregate: 'But the corporation must appear by attorney.' And Chitty, Volume 1, Page 551, lays down the rule: 'A plea by a corporation aggregate which is incapable of a personal appearance must purport to be by an attorney.' "

Because of the casual nature of the efforts of the petitioner to secure counsel to represent it, consulting twelve

out of some seven thousand available counsel; because of the frivolous and unworthy nature of the claims the petitioner has sought to advance; and because, as a corporation, it has been treated like all other corporations, the petitioner's claim concerning the existence of an important and justiciable federal constitutional question is wholly without merit and its Petition should be denied.

Respectfully submitted,

EDWIN F. WOODLE,
Respondent,
In Propria Persona.